

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JAMES FISCHER,

Plaintiff,

v.

VERIZON NEW YORK INC. and VERIZON
COMMUNICATIONS INC.,

Defendants.

Civil Action No.: 18-cv-11628

**DEFENDANTS' ANSWER
AND AFFIRMATIVE DEFENSES**

ANSWER

Defendants Verizon New York Inc. and Verizon Communications Inc. (“Defendants”), by and through their attorneys, hereby answer the allegations set forth in Plaintiff James Fischer’s (“Plaintiff”) Complaint as follows:

1. The allegations in Paragraph 1 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.
2. The allegations in Paragraph 2 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.
3. The allegations in Paragraph 3 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.
4. The allegations in Paragraph 4 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.
5. The allegations in Paragraph 5 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.

6. The allegations in Paragraph 6 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.

7. The allegations in Paragraph 7 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.

8. The allegations in Paragraph 8 are legal conclusions, and the regulation speaks for itself. To the extent a response is required, Defendants deny them.

9. The allegations in Paragraph 9 are legal conclusions, and the regulation speaks for itself. To the extent a response is required, Defendants deny them.

10. The allegations in Paragraph 10 are legal conclusions, and the statute speaks for itself. To the extent a response is required, Defendants deny them.

The Parties

11. Defendants lack sufficient information to admit or deny the allegations in Paragraph 11.

12. Admitted, without, however, admitting that Verizon Communications Inc. is a proper defendant in this case.

13. Admitted, without, however, admitting that Verizon New York Inc. is a proper defendant in this case.

Jurisdiction and Venue

14. The allegations in Paragraph 14 are legal conclusions. To the extent a response is required, Defendants deny them.

Monetary Jurisdiction

15. The allegations in Paragraph 15 are legal conclusions. To the extent a response is required, Defendants deny that any money is owed to Plaintiff.

The Facts

16. Defendants lack sufficient information to admit or deny the allegations in Paragraph 16.

17. Defendants lack sufficient information to admit or deny the allegations in Paragraph 17.

18. Defendants lack sufficient information to admit or deny the allegations in Paragraph 18.

19. Defendants lack sufficient information to admit or deny the allegations in Paragraph 19.

20. Defendants lack sufficient information to admit or deny the allegations in Paragraph 20.

21. Defendants lack sufficient information to admit or deny the allegations in Paragraph 21.

22. Defendants lack sufficient information to admit or deny the allegations in Paragraph 22.

23. Defendants lack sufficient information to admit or deny the allegations in Paragraph 23.

24. Defendants lack sufficient information to admit or deny the allegations in Paragraph 24.

25. Defendants lack sufficient information to admit or deny the allegations in Paragraph 25.

26. Defendants lack sufficient information to admit or deny the allegations in Paragraph 26.

27. Denied.

28. Denied.

29. Defendants lack sufficient information to admit or deny the allegations in Paragraph 29.

30. Defendants lack sufficient information to admit or deny the allegations in Paragraph 30.

31. Defendants lack sufficient information to admit or deny the allegations in Paragraph 31.

32. Defendants lack sufficient information to admit or deny the allegations in Paragraph 32.

33. Defendants lack sufficient information to admit or deny the allegations in Paragraph 33.

34. Defendants lack sufficient information to admit or deny the allegations in Paragraph 34.

35. Defendants lack sufficient information to admit or deny the allegations in Paragraph 35.

36. Denied.

37. Denied.

38. Defendants lack sufficient information to admit or deny the allegations in Paragraph 38.

39. Defendants lacked sufficient information to admit or deny the allegations in paragraph 39.

40. Denied.

41. Defendants lack sufficient information to admit or deny the allegations in Paragraph 41.

42. Defendants lack sufficient information to admit or deny the allegations in Paragraph 42.

43. Defendants lack sufficient information to admit or deny the allegations in Paragraph 43.

44. Denied that Defendants committed any illegal acts. Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 44.

45. Defendants lack sufficient information to admit or deny the allegations in Paragraph 45.

46. Defendants lack sufficient information to admit or deny the allegations in Paragraph 46.

47. Admitted, that Verizon New York Inc. provides local exchange telecommunications services.

48. Denied, except Defendants admit that Verizon provides services to help users prevent unsolicited calls.

49. Admitted.

50. The allegations in Paragraph 50 are legal conclusions and the statute speaks for itself. To the extent a response is required, Defendants deny them.

51. Denied.

52. Admitted that the link provided in Paragraph 52 brings users to a Federal Communications Commission page dated April 17, 2017 indicating “Verizon” is a member.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Defendants lack sufficient information to admit or deny the allegations in Paragraph 57 pertaining to the state of origin for the incoming calls. Defendants deny the remainder of the allegations in Paragraph 57.

58. The allegations in Paragraph 58 are legal conclusions. To the extent a response is required, Defendants deny them.

**Similar Causes of Action Under 47 USC § 227, 47 CFR § 64.1200,
and NY GBS § 339-p**

59. The allegations in Paragraph 59 are legal conclusions. To the extent a response is required, Defendants deny them.

60. The allegations in Paragraph 60 are legal conclusions. To the extent a response is required, Defendants deny them.

61. Admitted that Exhibit A purports to be a list of calls made by Defendants to Plaintiff. Defendants deny the remainder of the allegations in Paragraph 61.

**1st Cause of Action
Negligent Recorded Voice Violations –
47 USC § 227(b)**

62. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

63. Denied.

**2nd Cause of Action
Knowing and Willful Recorded Voice Violations –
47 USC § 227(b)**

64. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

65. Denied.

3rd Cause of Action
Negligent Recorded Voice Violations – 47 CFR § 64.1200(a)(3)

66. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

67. Admitted that Plaintiff seeks the relief alleged in Paragraph 67. Denied that Defendants committed “recorded voice violations.”

4th Cause of Action
Knowing and Willful Recorded Voice Violations –
47 CFR § 64.1200(a)(3)

68. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

69. Denied.

5th Cause of Action
Negligent Failure to Provide the Identity of the Caller –
47 CFR § 64.1200(b)(1) and 47 USC § 227(c)

70. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

71. Denied.

72. Denied.

6th Cause of Action
Knowing and Willful Failure to Provide the Identity of the Caller –
47 CFR § 64.1200(b)(1) and 47 USC § 227(c)

73. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

74. Denied.

7th Cause of Action
Negligent Failure to Provide and Automated Opt-Out Mechanism –

47 CFR § 64.1200(b)(3)

75. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

76. Denied.

8th Cause of Action
Knowing and Willful Failure to Provide an Opt-Out Mechanism –
47 CFR § 64.1200(b)(3)

77. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

78. Denied.

9th Cause of Action
Negligent Failure to Honor a Written Request Not to be Called –
47 CFR § 64.1200(d)(3) and 47 USC § 227(c)

79. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

80. Denied.

10th Cause of Action
Knowing and Willful Failure to Honor a Written Request Not to be Called –
47 CFR § 64.1200(d)(3) and 47 USC § 227(c)

81. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

82. Denied.

11th Cause of Action
Negligent Failure to Maintain a Company Do Not Call List –
47 CFR § 64.1200(d)(6) and 47 USC § 227(c)(1)

83. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

84. Denied.

12th Cause of Action
Knowing and Willful Failure to Maintain a Company Do Not Call List –
47 CFR § 64.1200(d)(6) and 47 USC § 227(c)(1)

85. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

86. Denied.

13th Cause of Action
Negligent Do Not Call Violations –
47 USC § 227(c)(3)

87. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

88. Denied.

14th Cause of Action
Knowing and Willful Do Not Call Violations –
47 USC § 227(c)(3)

89. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

90. Denied.

15th Cause of Action
Knowing and Willful Do Not Call Violations –
47 USC § 227(c)(3)

91. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

92. Denied.

16th Cause of Action
Knowing and Willful Do Not Call FCC Regulation Violations –
47 CFR § 64.1200

93. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

94. Denied.

17th Cause of Action
Negligent Multiple Call Violations –
47 USC § 227(c)

95. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

96. Denied.

18th Cause of Action
Knowing and Willful Multiple Call Violations –
47 USC § 227(c)

97. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

98. Denied.

19th Cause of Action
Negligent Lack of Address Violations –
NY GBS § 399-p(3)

99. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

100. Denied.

101. Denied.

20th Cause of Action
Knowing and Willful Lack of Address Violations –
NY GBS § 399-p(3)

102. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

103. Denied.

21st Cause of Action
Negligent Auto/Sequential/Random Dialer Violation –
NY GBS § 399-p(4)

104. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

105. Denied.

22nd Cause of Action
Knowing and Willful Auto/Sequential/Random Dialer Violation –
NY GBS § 399-p(4)

106. Defendants incorporate and re-allege their responses to the preceding paragraphs in the Complaint.

107. Denied.

For All Causes of Action

108. Admitted that Plaintiff seeks pre- and post-judgment interests and costs. Defendants deny that Plaintiff is entitled to such relief.

Trial By Jury

109. Admitted.

Defendants' Affirmative Defenses

By way of further response, Defendants assert the following affirmative defenses in response to the allegations in Plaintiff's Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, at least in part, to the extent that Plaintiff and/or others authorized to use his home phone consented to receive calls from Defendants.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent his home phone is not a "residential" number.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent that Plaintiff's phone number was obtained from a directory, advertisement, or site on the internet to which Plaintiff and/or others authorized to use his home phone made the number available for public disclosure.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's recovery is barred, in whole or in part, by his failure to mitigate damages.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's recovery is barred, in whole or in part, by the TCPA's Safe Harbor Provisions.

RESERVATION OF OTHER DEFENSES

Defendants intend to rely upon such other defenses that may become available or appear during the course of discovery in this matter and hereby reserves the right to amend this Answer to assert such defenses.

WHEREFORE, Defendants requests that the Court: (A) enter Judgment in their favor and against Plaintiff on all counts of Plaintiff's Complaint; (B) award Defendant its reasonable attorney's fees and costs; and (C) grant Defendant such other and further relief as is appropriate.

By: s/Gavin J. Rooney
Gavin J. Rooney

Dated: December 14, 2018